



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II-खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 367] नई दिल्ली, सोमवार, नवम्बर 7, 1966/क.तिक 16, 1888

No. 367] NEW DELHI, MONDAY, NOVEMBER 7, 1966/KARTIKA 16, 1888

इस भाग में भिन्न-भिन्न संख्या की जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

NOTIFICATION

New Delhi, the 27th October 1966

S.O. 3443.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Jabalpur, in the matter of an application under section 33A of the said Act from Shri M. K. Jain, an employee of the State Bank of India which was received by the Central Government on the 12th October, 1966.

IN THE COURT OF SHRI SHRI KRISHNA DAS SHAH: PRESIDING OFFICER,
LABOUR COURT, UNDER I.D. ACT, JABALPUR

CASE No. 46/65-I.D. (CENTRAL)

BETWEEN

Shri M. K. Jain, C/o State Bank of India, Employees Union Bombay Circle,
Bombay—Applicant.

Vs.

State Bank of India, Bombay—Non-applicant.

Order dated 7th October 1966

Applicant had presented the application on 5th March 1962 before the National Industrial Tribunal (Bank dispute) Bombay under section 33A of Industrial Dispute Act, hereinafter referred to as the Act. It was alleged in the application that he was employed in the State Bank of India, Katni Branch, as a clerk. He was given a chargesheet to which the applicant submitted his explanation. Then

an enquiry was held. The prayer of the applicant for the postponement of the enquiry was not accepted. The non-applicant then issued a show cause notice to the applicant and proposed his dismissal from service. The applicant submitted his replies to the show cause notice. The State Bank of India, Katni vide their letter dated 15th April 1961 terminated the services of applicant from 16th April 1961. An industrial dispute concerning the applicant and others was pending before the National Tribunal Bombay and the applicant could have been dismissed only after filing an application for approval of the action before the Tribunal. The termination of the applicant was thus in contravention of section 33 of the Act. It was therefore prayed that the national tribunal should pass suitable orders after enquiring in the complaint.

(2) In his written statement, the non-applicant denied that the State Bank had terminated the services of the applicant in contravention of section 33(2) (b) of the Act. His services were terminated only after the application/the National Tribunal had been filed for approval of the action taken of dismissing the applicant. The other adverse allegations of the applicant were also denied.

(3) The Central Government by its notification dated 23rd December 1960, in exercise of the powers conferred by sub-section 2 of the section 33B of the Act, authorised the above Tribunal to transfer proceedings pending before it under section 33 or 33A of the Act to Labour Court, Delhi or Dhanbad. The Tribunal therefore, transferred this case to Central Government Labour Court Delhi. The case was later on transferred to Central Labour Court, Bhopal under the orders of the Government of India, Ministry of Labour and Employment No. 55/(2)/63IR-IV, dated 23rd February, 1963.

(4) Later on, the case was transferred from Labour Court, Bhopal to this court under orders of the Government of India [Ministry of Labour and Employment No. 85(35)/65-LR-V, dated 21st October, 1965].

(5) The State Bank of India Bombay had also filed an application before the above National Tribunal on 6th May 1961 under section 33(2) of the Act, for approval of the action of the non-applicant in dismissing the applicant. This application was also ultimately transferred to this court by the above orders of the Government of India in the department of labour and employment and the National Tribunal. This case was registered here as case No. 125/65 I.D.A. (C). After taking evidence of parties, this case was decided by this court on 20th June, 1966. It has been held in this case that the non-applicant had applied for permission to dismiss the applicant before actually dismissing him and that the other provision of section 33(2) of the Act, were also complied with and that there was no contravention of section 33 by the non-applicant and his action in dismissing the applicant was approved.

(6) Under section 33A, the court has to decide the questions (1) whether the employer has been guilty of contravening the provisions of section 33 and (2) if the above question is decided in favour of the workman, then the court has also to decide on the merits of the disputed action of the employer. But when approval has been granted to the non-applicant or his action in dismissing the applicant under section 33(2) of the Act, the application of the applicant complaining about the breach of section 33 becomes infructuous and cannot be accepted. It is not open to the Court to treat its order granting approval of the employers action under section 33(2) of the Act as a nullity while deciding a complaint under section 33A of the Act later on. Once permission under section 833 of the Act has been given by Industrial Tribunal, there does not remain any scope for a complaint under section 33A. The above view of this court is supported by the following decision:—

(1) *Kamla Mills Ltd., vs. Machimutta and others*, 3 F.J.R. Page 447.

(2) 9 F.J.T. Page 205.

(3) 1953 L.L.J. Vol. II page 321.

(7) In view of the above, the complaint of the applicant is rejected. No order as to costs.

Sd/- SHRI KRISHNA DAS SHAH.

Presiding Officer,

Labour Court, under I.D. Act Jabalpur, M.P.

[No. 55(39)/66-LRIV.]

P. M. NAYAK, Addl. Secy.